Le Boeuf a la Mode, Inc. d/b/a Le Boeuf a la Mode Restaurant *and* Hotel Employees and Restaurant Employees Union, Local 100 of New York, New York and Vicinity, AFL–CIO. Case 2–CA–26035

November 23, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

Upon a charge filed by Hotel Employees and Restaurant Employees Union, Local 100 of New York, New York and Vicinity, AFL–CIO, the Union, the General Counsel of the National Labor Relations Board issued a complaint on November 30, 1992, against Le Boeuf a la Mode, Inc. d/b/a Le Boeuf a la Mode Restaurant (the Respondent) alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. The Respondent was properly served copies of the charge and complaint, and filed an answer on December 18, 1992. Thereafter, the Respondent withdrew its answer by letter of August 23, 1993.

On October 27, 1993, the General Counsel filed a Motion for Summary Judgment with the Board. On October 29, 1993, the National Labor Relations Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. The undisputed allegations in the Motion for Summary Judgment disclose that the Respondent withdrew its answer to the complaint. Such a withdrawal has the same effect as a failure to file an answer, i.e., the allegations in the complaint must be considered to be admitted to be true. See *Maislin Transport*, 274 NLRB 529 (1985).

Accordingly, based on the withdrawal of the Respondent's answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a domestic corporation with an office and place of business located in New York, New York, operates a restaurant serving food and beverages to the general public. Annually, the Respondent derives gross revenues in excess of $500,000 and purchases and receives goods, food products, and materials valued in excess of $5000 directly from points located outside the State of New York. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> Included: All dining room and kitchen employees.
>
> Excluded: All other employees, office clerical employees, professional employees, guards and supervisors as defined in the Act.

Since prior to November 15, 1987, and for many years, the Union has been the exclusive collective-bargaining representative of the unit employees and has been recognized as such representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective from November 15, 1987, through November 14, 1990. Since prior to November 15, 1987, and for many years, based on Section 9(a) of the Act, Local 100 has been and is the exclusive collective-bargaining representative of unit employees.

On or about March 31, 1992, the Union requested that the Respondent furnish it with the name, date of hire, classification, and wage rate for each employee working in classifications covered by the collective-bargaining agreement.[1] This information is necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the unit employees. Since about March 31, 1992, the Respondent has failed and refused to furnish the Union with the information.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has violated Section 8(a)(1) and (5) and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

[1] The Union also requested the social security numbers of the Respondent's present unit employees. We have previously held that social security numbers are not presumptively relevant. Accordingly, in the absence of a showing here of their potential or probable relevance, we dismiss the allegation concerning the failure to produce social security numbers. See *Sea-Jet Trucking Corp.*, 304 NLRB 67, 67 fn. 2 (1991).

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(1) and (5) by failing and refusing to furnish the Union with certain information, we shall order the Respondent to furnish the Union with that information.

ORDER

The National Labor Relations Board orders that the Respondent, Le Boeuf a la Mode, Inc. d/b/a Le Boeuf a la Mode Restaurant, New York, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain in good faith with the Union by failing and refusing to furnish the Union with the name, date of hire, classification, and wage rate for each unit employee.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, provide the Union with the name, date of hire, classification, and wage rate for each unit employee.

(b) Post at its facility in New York, New York, copies of the attached notice marked "Appendix."[2] Copies of the notice, on forms provided by the Regional Director for Region 2, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material.

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. November 23, 1993

James M. Stephens, Chairman

Dennis M. Devaney, Member

John Neil Raudabaugh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to bargain in good faith by failing and refusing to provide necessary and relevant information to Hotel Employees and Restaurant Employees Union, Local 100 of New York, New York and Vicinity, AFL–CIO, regarding wages, hours, and terms and conditions of employment of our employees in the following unit appropriate for purposes of collective bargaining:

Included: All dining room and kitchen employees.

Excluded: All other employees, office clerical employees, professional employees, guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, provide the Union with the name, date of hire, classification, and wage rate for each employee working in classifications covered by our 1987–1990 collective-bargaining agreement.

LE BOEUF A LA MODE, INC. D/B/A/ LE BOEUF A LA MODE RESTAURANT